

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF) IDACOMM, INC. FOR A TAX CREDIT FOR) INSTALLING QUALIFIED BROADBAND) EQUIPMENT.)	CASE NO. GNR-T-03-17 ORDER NO. 29285

On May 2, 2003, IDACOMM, Inc. filed an Application requesting that the Commission find the Company eligible to receive an Idaho investment tax credit. Pursuant to *Idaho Code* § 63-3029I, an Idaho taxpayer may receive a tax credit for installing “qualified broadband equipment” in Idaho. To be eligible for the tax credit, the taxpayer must obtain from the Commission an Order confirming that the equipment has been installed and that it meets the definition of qualified broadband equipment set out at *Idaho Code* § 63-3029I(3)(b). In this Order, we find that IDACOMM has installed qualifying broadband equipment.

THE APPLICATION

During calendar year 2002, IDACOMM states that it installed Alcatel brand fiber optic cable and supporting splicers and conduit. IDACOMM also installed LuxN brand optical multiplexers and supporting underground vaults and power supply equipment for the provision of high-speed internet and other point-to-point data services to customers in Idaho’s Treasure Valley. The Company indicates that it offers high-speed access to customers at transmission rates from 1.544 megabits per second (Mbps) up to 1000 Mbps. One-hundred percent of IDACOMM’s customers are Idaho subscribers of which approximately 5% are IdaCorp-related companies.

STAFF REVIEW

To implement the Commission’s responsibilities under *Idaho Code* § 63-3029I, the Commission issued procedural Order No. 28784 in July of 2001. This Order identifies information that must be included in an Application for a broadband tax credit. Once the information has been filed, then the Commission Staff reviews the Application and submits a recommendation to the Commission.

Staff noted that IDACOMM claimed in its Application that it was eligible for the tax credit because it is a “telecommunications carrier” as that term is defined in the Communications Act of 1934, as amended. Staff was concerned that IDACOMM’s offering of “dark fiber” rather than providing dial tone, switching or transmission, might not constitute “telecommunications service” as described in *Idaho Code* § 63-3029I(3)(b)(i). Dark or “unlit” fiber does not have the electronics to transmit information between the ends of the fiber links but is made available for customers to use their own electronics to transmit signals between points.

Upon further review, Staff reported that the Federal Communications Commission (FCC) has equated dark fiber with unused transport capacity. Consequently, the FCC found that dark fiber is a “feature, function, and capability of facilities used to provide telecommunications services.” The FCC further stated that the term “dark fiber” refers to network facilities or equipment that is “customarily employed for the purpose of providing a telecommunication service.”¹ Although IDACOMM may not meet the definition of a “telecommunications carrier” under Idaho Law², Staff determined that dark fiber is used for the provision of telecommunication service under federal law and therefore qualifies as telecommunications equipment under *Idaho Code* § 63-3029I(3)(b)(i).

DISCUSSION

Having reviewed IDACOMM’s Application and Staff’s recommendation, we find that the Company’s Application for a qualifying broadband equipment Order should be granted. The Company has demonstrated that it installed the qualifying broadband equipment identified in its Application during 2002, in conformance with the requirements set forth in *Idaho Code* § 63-3029I. We further find that as configured, the installed equipment and dark fiber is an integral part of a broadband network necessary to deliver broadband services to Idaho customers. It is therefore appropriate for the Commission to issue this Order confirming that IDACOMM has installed qualified broadband equipment as a precondition to seeking an Idaho broadband tax credit.

¹ *In the Matter of Implementation of Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order Fourth Further Notice of Proposed Rulemaking, ¶¶ 339-40 (Sept. 15, 1999).

² See Order Nos. 28187 and 28497.

ORDER

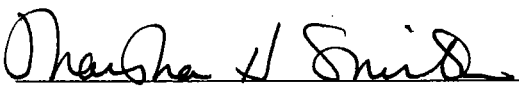
IT IS HEREBY ORDERED that IDACOMM, Inc's Application for an Order certifying that it has installed qualified broadband equipment is granted.

IT IS FURTHER ORDERED that a copy of this Order be served upon the Tax Commission.

THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

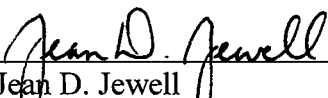
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 8th day of July 2003.


PAUL KJELLANDER, PRESIDENT


MARSHA H. SMITH, COMMISSIONER


DENNIS S. HANSEN, COMMISSIONER

ATTEST:


Jean D. Jewell
Commission Secretary

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